

February 9, 1994

This is response to your correspondence of September 20, 1993, requesting guidance in determining whether certain common tasks performed for ARCO pipe line company by environmental service contractors would subject their employees to the drug testing requirements under 49 CFR Parts 199 and 40. You indicate that ARCO currently requires companies performing the type of work described in your letter to comply with the drug testing regulations. Recent comments from some contractors and an opinion letter issued by this office on July 1, 1993, have prompted ARCO to question whether these contractors are covered under Parts 199 and 40.

In general, it should be noted that procedures directing “*spill clean-up*” such as removal of contaminated soil, water or conducting bore sampling of soil and water are not regulated functions under Part 192, 193, or 195, and thus do not subject employees to RSPA’s drug testing program.

Your correspondence presents five different scenarios and seeks a written response explaining which of them, if any, are subject to the drug testing regulations. Your scenarios are restated below with our response.

SCENARIO #1: A contractor performs site characterization work at a site within the pipeline right-of-way. The work is performed in areas five to ten feet from the pipeline and consists of drilling soil borings, installing groundwater monitoring wells, excavating sample collection pits or trenches (with backhoes and other excavating equipment) and collecting soil, groundwater or surface water samples. Samples will **not** be collected from the pipeline at any time; however, investigative samples will be collected five to ten feet from the pipeline. (The contractor does not contact the pipeline at any time.)

ANSWER: Based on the information provided in this scenario, it does not appear that the contractor is performing covered functions. Since the work does not appear to satisfy a Part 192, 193, or 195 operating, maintenance, or emergency-response requirement, the contractor employees would not be subject to drug testing.

SCENARIO #2: A contractor performs ex-situ remedial activities at a site within the pipeline right-of-way. The work is performed in areas over, under and around the pipeline and consists of excavating contaminated soil (with backhoes and other large excavating equipment), removing, thermally treating or bioremediating the soil and backfilling the excavation with treated soil or clean fill material. Bioremediation requires nutrient addition and tilling with large equipment. (The contractor does not contact the pipeline at any time)

ANSWER: Based on the information provided in this scenario, it would appear that the contractor is performing covered functions, especially if the work being completed is to satisfy a requirement of Section 192.319(b) or 195.252. Your scenario indicates that this process is being conducted in **areas over, under and around the pipeline** and also involves backfilling the excavated areas. The scenario presented appears to meet the 3-part test of performing a covered

function (operation, maintenance, or emergency-response; on the pipeline; and subject to the regulations contained in Part 192 or 195).

SCENARIO #3: A contractor performs in-situ remedial activities at a site within the pipeline right-of-way. The work is performed five to ten feet from the pipeline and includes installation of several vent and water wells, air sparging of groundwater, extraction of soil vapors and the addition of nutrients required by micro-organisms. (The contractor does not contact the pipeline at any time.)

ANSWER: Based on the information provided in this scenario, it does not appear that the contractor is performing covered functions. Since the work does not appear to satisfy a Part 192, 193, or 195 operating, maintenance, or emergency-response requirement, the contractor employees would not be subject to drug testing.

SCENARIO #4: A contractor performs clean-up activities stemming from a pipeline emergency situation. The work includes containing spilled product, cleaning-up the product, excavating contaminated soil (with backhoes and other large excavating equipment) and backfilling with clean fill material. (The contractor does not contact the pipeline at any time during the response.)

ANSWER: In the scenario above, if the work being completed is required to satisfy a backfilling requirement under Section 192.319(b) or 195.252, then the contractor employees would be subject to drug testing.

SCENARIO #5: A contractor performs long-term monitoring at a site near the pipeline. The work includes collecting samples from groundwater monitoring wells, performing air monitoring and collecting confirmation soil samples. (The contractor does not contact the pipeline at any time.)

ANSWER: Based on the information provided in this scenario, it does not appear that the contractor is performing covered functions. Since the work does not appear to satisfy a Part 192, 193, or 195 operating, maintenance, or emergency-response requirement, the contractor employees would not be subject to drug testing.

Thank you for your inquiry. Please let me know if you need additional information about our drug testing requirements.

Sincerely,

Richard L. Rippert
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Compliance